

SENATE BILL No. 354

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-17.4-5-2.5; IC 20-8.1-12; IC 20-12-70; IC 31-9-2; IC 31-31; IC 31-32; IC 31-34-12-1; IC 31-36-1-2; IC 31-37; IC 31-38-2-9; IC 31-39-5-4; IC 31-40-1-1.7; IC 35-38-1-22; IC 35-46-1-8.

Synopsis: Juvenile law issues. Provides that certain juvenile acts are considered status offenses and not delinquent acts. Prohibits a child who is alleged to have committed a status offense from being detained in certain types of facilities. Prohibits sustained sight or sound contact between juveniles and adults in juvenile detention facilities that are located on the same grounds or in the same building as an adult jail or a lockup. Requires a juvenile court to conduct a hearing regarding the secure detention of a repeat status offender during the pendency of a violation hearing. Requires secure facilities to submit data regarding detention of children to the Indiana criminal justice institute. Requires secure facilities and nonsecure facilities to submit to annual site visits. Repeals a statute concerning the modification of juvenile court orders upon a child's truancy violation.

Effective: July 1, 2004.

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January 12, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 354

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-17.4-5-2.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.5. (a) This section
3 applies to:
4 (1) a restriction;
5 (2) a reservation;
6 (3) a condition;
7 (4) an exception; or
8 (5) a covenant;
9 that is created after June 30, 1990, in a subdivision plat, deed, or other
10 instrument of or pertaining to, the transfer, sale, lease, or use of
11 property.
12 (b) This section applies to a group home that houses:
13 (1) not more than ten (10) children; and
14 (2) only children who are judicially determined to be either:
15 (A) children in need of services under IC 31-34-1 (or
16 IC 31-6-4-3 or IC 31-6-4-3.1 before their repeal); or
17 (B) children who have committed a ~~delinquent act~~ **status**

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1 **offense** under IC 31-37-2-2, IC 31-37-2-3, or IC 31-37-2-5 (or
 2 IC 31-6-4-1(a)(2), IC 31-6-4-1(a)(3), or IC 31-6-4-1(a)(5)
 3 before their repeal).

4 (c) A restriction, a reservation, a condition, an exception, or a
 5 covenant in a subdivision plat, deed, or other instrument of or
 6 pertaining to the:

- 7 (1) transfer;
- 8 (2) sale;
- 9 (3) lease; or
- 10 (4) use;

11 of property that would permit the residential use of property but
 12 prohibit the use of that property as a group home is, to the extent of the
 13 prohibition, void for public policy reasons.

14 (d) The prohibition under subsection ~~(c)~~ (c) is void even if the
 15 prohibition is based on any of the following grounds:

- 16 (1) The group home is a business.
- 17 (2) The persons residing in the group home are not related.
- 18 (3) Any other reason.

19 SECTION 2. IC 20-8.1-12-2 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. If a person other than
 21 a member of the administrative staff who is an employee of a school
 22 corporation has personally observed:

- 23 (1) a violation described in section 1 of this chapter; or
- 24 (2) **a status offense** or a delinquent act that would be a violation
 25 under section 1 of this chapter if the violator ~~was~~ **were** an adult;
 26 in, on, or within one thousand (1,000) feet of the school property of the
 27 school corporation employing the person, the person shall immediately
 28 report the violation in writing to a member of the administrative staff
 29 for the school corporation employing the person.

30 SECTION 3. IC 20-8.1-12-3 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A member of the
 32 administrative staff who, based on personal knowledge or on the report
 33 of another employee of the school corporation, believes that a person
 34 has committed a violation described in section 1 of this chapter **or a**
 35 **status offense** or a delinquent act that would be a violation described
 36 in section 1 of this chapter if the violator ~~was~~ **were** an adult in, on, or
 37 within one thousand (1,000) feet of the school property of the school
 38 corporation employing the member, shall immediately report:

- 39 (1) a general description of the violation;
- 40 (2) the name or a general description of each violator known to
 41 the member;
- 42 (3) the date and place of the violation;

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(4) the name or a general description of each person who the member knows witnessed any part of the violation; and

(5) a general description and the location of any property that the member knows was involved in the violation;

in writing to a law enforcement officer.

SECTION 4. IC 20-8.1-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) A person, other than a person who has committed a violation under section 1 of this chapter **or a status offense** or a delinquent act that would be a violation under section 1 of this chapter if the violator ~~was~~ **were** an adult, who:

(1) makes a report under this chapter in good faith;

(2) participates in good faith in a judicial proceeding resulting from a report under this chapter;

(3) employs a person described in subdivision (1) or (2); or

(4) supervises a person described in subdivision (1) or (2);

is not liable for civil damages or penalties that might otherwise be imposed because of the conduct described in subdivisions (1) through (4).

(b) A person described in subsection (a)(1) or (a)(2) is presumed to act in good faith.

SECTION 5. IC 20-12-70-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. As used in this chapter, "eligible student" means a student who meets the following requirements:

(1) Is a resident of Indiana.

(2) Is enrolled in grade 8 at a public or an accredited nonpublic school.

(3) Is eligible for free or reduced priced lunches under the national school lunch program.

(4) Agrees in writing, together with the student's custodial parents or guardian, that the student will:

(A) graduate from a secondary school located in Indiana that meets the admission criteria of an institution of higher learning;

(B) not illegally use controlled substances (as defined in IC 35-48-1-9);

(C) not commit a crime or infraction described in IC 9-30-5;

(D) not commit any other crime, **status offense**, or delinquent act (as described in IC 31-37-1-2 or IC 31-37-2-2 through IC 31-37-2-5 (or IC 31-6-4-1(a)(1) through IC 31-6-4-1(a)(5) before their repeal));

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(E) when the eligible student is a senior in high school, timely apply:

- (i) to an institution of higher learning for admission; and
- (ii) for any federal and state student financial assistance available to the eligible student to attend an institution of higher learning; and

(F) achieve a cumulative grade point average upon graduation of at least 2.0 on a 4.0 grading scale (or its equivalent if another grading scale is used) for courses taken during grades 9, 10, 11, and 12.

SECTION 6. IC 20-12-70-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. As used in this chapter, "scholarship applicant" means a student who meets the following requirements:

- (1) Was an eligible student under section 2 of this chapter.
- (2) Is a resident of Indiana.
- (3) Has graduated from a secondary school located in Indiana that meets the admission criteria of an institution of higher learning.
- (4) Has applied to attend and has been accepted to attend an institution of higher learning as a full-time student.
- (5) Certifies in writing that the student has:
 - (A) not illegally used controlled substances (as defined in IC 35-48-1-9);
 - (B) not illegally consumed alcoholic beverages;
 - (C) not committed any other crime, a **status offense**, or a delinquent act (as described in IC 31-37-1-2 or IC 31-37-2-2 through IC 31-37-2-5 (or IC 31-6-4-1(a)(1) through IC 31-6-4-1(a)(5) before their repeal)); and
 - (D) timely filed an application for other types of financial assistance available to the student from the state or federal government.

SECTION 7. IC 31-9-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) "Child", for purposes of IC 31-15, IC 31-16, and IC 31-17, means a child or children of both parties to the marriage. The term includes the following:

- (1) Children born out of wedlock to the parties.
- (2) Children born or adopted during the marriage of the parties.
- (b) "Child", for purposes of the Uniform Interstate Family Support Act under IC 31-18, has the meaning set forth in IC 31-18-1-2.
- (c) "Child", for purposes of IC 31-19-5, includes an unborn child.
- (d) "Child", for purposes of the juvenile law, means:

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- (1) a person who is less than eighteen (18) years of age;
- (2) a person:
 - (A) who is eighteen (18), nineteen (19), or twenty (20) years of age; and
 - (B) who either:
 - (i) is charged with a delinquent act **or a status offense** committed before the person's eighteenth birthday; or
 - (ii) has been adjudicated a child in need of services before the person's eighteenth birthday; or
- (3) a person:
 - (A) who is alleged to have committed an act that would have been murder if committed by an adult; and
 - (B) who was less than eighteen (18) years of age at the time of the alleged act.

(e) "Child", for purposes of the Interstate Compact on Juveniles under IC 31-37-23-1, has the meaning set forth in IC 31-37-23-1.

SECTION 8. IC 31-9-2-76.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 76.3. "Lockup", for purposes of the juvenile law, means a temporary secure holding area located on the premises of a city or town police department.**

SECTION 9. IC 31-9-2-107.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 107.6. "Repeat runaway", for purposes of the juvenile law, means a child who:**

- (1) is placed on probation or is under the supervision of the juvenile court for a status offense under IC 31-37-2-2; and
- (2) commits a subsequent unrelated status offense under IC 31-37-2-2 during the period of probation or court supervision.

SECTION 10. IC 31-9-2-107.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 107.7. "Repeat truant", for purposes of the juvenile law, means a child who:**

- (1) is placed on probation or is under the supervision of the juvenile court for a status offense under IC 31-37-2-3; and
- (2) commits a subsequent unrelated status offense under IC 31-37-2-3 during the period of probation or court supervision.

SECTION 11. IC 31-9-2-114 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 114. "Secure facility", for purposes of the juvenile law, means a place of residence ~~other than~~**

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1 a shelter care facility; that prohibits the **uses locked buildings, fences,**
 2 **or other primary construction features to restrict the movement**
 3 **and the departure of a child: person in custody.**

4 SECTION 12. IC 31-9-2-117 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 117. "Shelter care
 6 facility", for purposes of the juvenile law, means a place of residence
 7 that:

8 (1) is licensed under the laws of any state; and
 9 (2) is not locked to prevent a child's departure unless the
 10 administrator determines that locking is necessary to protect the
 11 child's health.

12 (2) **does not use locked buildings, fences, or other primary**
 13 **construction features to restrict the movement and the**
 14 **departure of a child.**

15 A shelter care facility may restrict the movement and the
 16 departure of a child if the restrictions are enforced solely through
 17 the shelter care facility staff.

18 SECTION 13. IC 31-9-2-121.5 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2004]: Sec. 121.5. "Status offense", for
 21 purposes of the juvenile law, means an act described in
 22 IC 31-37-2-2 through IC 31-37-2-6.

23 SECTION 14. IC 31-31-8-2 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A juvenile detention
 25 facility is a secure facility that:

26 (1) is only used for the lawful custody and treatment of juveniles
 27 and meets state standards and licensing requirements as provided
 28 in department of correction rule 210 IAC 6; or
 29 (2) is located on the same grounds or in the same building as an
 30 adult jail or lockup and meets the following four (4) criteria:

31 (A) Total separation between juvenile and adult facility spatial
 32 areas so that there could be no ~~haphazard or accidental~~
 33 **sustained sight or sound** contact among juvenile and adult
 34 residents in the respective facilities. If space is used for both
 35 juveniles and adults, time-phasing of the use is acceptable if
 36 the arrangement precludes ~~haphazard or accidental~~ **sustained**
 37 **sight or sound** contact among juvenile and adult residents at
 38 all times. Sleeping or other living areas may not be shared
 39 under any circumstances.

40 (B) Total separation in all juvenile and adult program
 41 activities within the facilities, including recreation, education,
 42 counseling, health care, **and dining sleeping, and general**

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living activities. ~~Program activities may not be shared by juvenile and adult residents. However,~~ Program space, equipment, and other resources may be used by both juvenile and adult residents subject to clause (A).

(C) The administration and security functions of the juvenile detention program must be vested in separate staff who, if the staff serve both populations, are trained to serve a juvenile population **in areas of youth development, adolescent physical and mental health, and nonviolent crisis intervention.** Security and other direct care staff may not be used to serve the adult jail **or lockup** at the same time or during the same tour of duty that security and other direct care staff serve in the juvenile detention facility. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contact occurs under conditions of separation of juveniles and adults, can serve both juvenile and adult residents.

(D) The facility meets state standards and licensing requirements as provided in department of correction rule 210 IAC 6. The architectural and operational configuration of the juvenile facility must ~~assure total separation.~~ **prohibit sustained sight and sound contact among juvenile and adult residents.**

SECTION 15. IC 31-31-10-3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 3. (a) Each facility that receives children described in section 1 of this chapter for secure placement, including a:**

- (1) jail;
- (2) lockup;
- (3) juvenile detention facility;
- (4) juvenile correctional facility;
- (5) secure public facility for children; and
- (6) secure private facility for children;

shall collect and maintain information on the intake, release, and status offenses and delinquent acts for which the children are held in the facility.

(b) A facility described in subsection (a) shall:

- (1) **submit the information described in subsection (a) to the Indiana criminal justice institute one (1) time each:**
 - (A) **thirty (30) days; or**

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(B) ninety (90) days; and
 (2) allow annual site visits by the Indiana criminal justice institute or its agent to:

(A) verify the accuracy of the information submitted under subdivision (1); and

(B) determine compliance with juvenile law and the Juvenile Justice and Delinquency Prevention Act.

The information under subdivision (1) shall be submitted on forms provided by the Indiana criminal justice institute.

(c) A facility that is not a secure facility that receives children described in section 1 of this chapter for placement shall submit to annual site visits by the Indiana criminal justice institute or its agent to verify the facility's status as a nonsecure facility under the Juvenile Justice and Delinquency Prevention Act.

SECTION 16. IC 31-32-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. In addition to the rights described in section 1 of this chapter, a child charged with a **status offense or a delinquent act** is also entitled to:

- (1) be represented by counsel under IC 31-32-4;
- (2) refrain from testifying against the child; and
- (3) confront witnesses.

SECTION 17. IC 31-32-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. The following persons are entitled to be represented by counsel:

- (1) A child charged with a **status offense or a delinquent act**, as provided by IC 31-32-2-2.
- (2) A parent, in a proceeding to terminate the parent-child relationship, as provided by IC 31-32-2-5.
- (3) Any other person designated by law.

SECTION 18. IC 31-32-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. In determining whether any waiver of rights during custodial interrogation was made knowingly and voluntarily, the juvenile court shall consider all the circumstances of the waiver, including the following:

- (1) The child's physical, mental, and emotional maturity.
- (2) Whether the child or the child's parent, guardian, custodian, or attorney understood the consequences of the child's statements.
- (3) Whether the child and the child's parent, guardian, or custodian had been informed of the **status offense or the delinquent act** with which the child was charged or of which the child was suspected.
- (4) The length of time the child was held in custody before

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consulting with the child's parent, guardian, or custodian.

(5) Whether there was any coercion, force, or inducement.

(6) Whether the child and the child's parent, guardian, or custodian had been advised of the child's right to remain silent and to the appointment of counsel.

SECTION 19. IC 31-34-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A finding by a juvenile court that a child committed a **status offense or a delinquent act** or that an adult committed a crime must be based upon proof beyond a reasonable doubt.

SECTION 20. IC 31-36-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. The law enforcement agency shall prepare the report required by section 1 of this chapter as soon as practicable, but not later than five (5) hours after the law enforcement agency received the notification about a missing child. However, a law enforcement agency is not required to prepare the report required by section 1 of this chapter earlier than twenty-four (24) hours after the law enforcement agency received the notification about a missing child if:

(1) the law enforcement agency received a previous, unrelated notification that the child was missing; and

(2) the law enforcement agency has reason to believe that the child is missing because the child has committed a ~~delinquent act~~ **status offense** under IC 31-37-2-2.

SECTION 21. IC 31-37-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A child is a delinquent child if, before becoming eighteen (18) years of age, the child:

(1) commits a ~~delinquent act~~ **status offense** described in this chapter; and

(2) needs care, treatment, or rehabilitation that:

(A) the child is not receiving;

(B) the child is unlikely to accept voluntarily; and

(C) is unlikely to be provided or accepted without the coercive intervention of the court.

SECTION 22. IC 31-37-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A child commits a ~~delinquent act~~ **status offense** if, before becoming eighteen (18) years of age, the child leaves home:

(1) without reasonable cause; and

(2) without permission of the parent, guardian, or custodian, who requests the child's return.

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SECTION 23. IC 31-37-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A child commits a **delinquent act status offense** if, before becoming eighteen (18) years of age, the child violates IC 20-8.1-3 concerning compulsory school attendance.

SECTION 24. IC 31-37-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. A child commits a **delinquent act status offense** if, before becoming eighteen (18) years of age, the child habitually disobeys the reasonable and lawful commands of the child's parent, guardian, or custodian.

SECTION 25. IC 31-37-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. A child commits a **delinquent act status offense** if, before becoming eighteen (18) years of age, the child commits a curfew violation under IC 31-37-3.

SECTION 26. IC 31-37-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. A child commits a **delinquent act status offense** if, before becoming eighteen (18) years of age, the child violates IC 7.1-5-7 concerning minors and alcoholic beverages.

SECTION 27. IC 31-37-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A child may be taken into custody by a law enforcement officer acting with probable cause to believe that the child has committed a **status offense or a delinquent act**.

SECTION 28. IC 31-37-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A child alleged to be a delinquent child under IC 31-37-2, except as provided in section 3 of this chapter, may not be held in:

- (1) a **secure juvenile detention facility**; or
- (2) a **shelter care facility that houses persons charged with, imprisoned for, or incarcerated for crimes: secure private facility for children.**

SECTION 29. IC 31-37-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A child alleged to be a delinquent child under IC 31-37-1 may be held in either of the following:

- (1) A **secure facility lockup or an adult jail** for not more than six
- (6) hours upon arrest for the limited purposes of:
 - (A) identification;
 - (B) processing;
 - (C) interrogation;
 - (D) transfer to a juvenile detention facility; or

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(E) release to ~~parents~~: **a parent, guardian, or custodian.**

If the child is detained in a ~~secure facility~~, **lockup or an adult jail**, the child shall be restricted to an area of the ~~facility lockup or the adult jail~~ in which the child has not more than haphazard or incidental sight or sound contact with ~~persons~~ **any adult** charged with, imprisoned for, or incarcerated for ~~crimes~~: **a crime.**

(2) A juvenile detention facility.

SECTION 30. IC 31-37-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A child alleged to be a delinquent child because of an act under IC 31-37-2-2 may be held in a juvenile detention facility for not more than twenty-four (24) hours ~~not including after the child is taken into custody, excluding Saturdays, Sundays, and nonjudicial days~~: **legal holidays.**

SECTION 31. IC 31-37-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. A court may not place a child in:

(1) a community based correctional facility for children;

(2) a juvenile detention facility;

~~(3) a secure facility;~~

~~(4)~~ **(3)** a secure private facility **for children**; or

~~(5)~~ **(4)** a shelter care facility;

that is located outside the child's county of residence unless placement of the child in a comparable facility with adequate services located in the child's county of residence is unavailable or the child's county of residence does not have an appropriate comparable facility with adequate services.

SECTION 32. IC 31-37-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) A person may give an intake officer or a prosecuting attorney written information indicating that a child is a delinquent child.

(b) If the information is given to the intake officer, the intake officer shall immediately forward the information to the prosecuting attorney.

(c) If the prosecuting attorney has reason to believe the child has committed a **status offense or a** delinquent act, the prosecuting attorney shall instruct the intake officer to make a preliminary inquiry to determine whether the interests of the public or of the child require further action.

SECTION 33. IC 31-37-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The intake officer shall do the following:

(1) Send the prosecuting attorney a copy of the preliminary inquiry if the case involves an allegation that the child committed

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an act that would be a crime if committed by an adult.

(2) Send to:

(A) the prosecuting attorney; or

(B) the attorney for the county office of family and children;
a copy of the preliminary inquiry if the case involves an allegation
that the child committed a ~~delinquent act that would not be a~~
~~crime if committed by an adult.~~ **status offense.**

(3) Recommend whether to:

(A) file a petition;

(B) informally adjust the case;

(C) refer the child to another agency; or

(D) dismiss the case.

(b) The prosecuting attorney and the court may agree to alter the
procedure described in subsection (a).

SECTION 34. IC 31-37-12-5 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. The juvenile court
shall inform the child and the child's parent, guardian, or custodian, if
the person is present, of the following:

(1) The nature of the allegations against the child.

(2) The child's right to the following:

(A) Be represented by counsel.

(B) Have a speedy trial.

(C) Confront witnesses against the child.

(D) Cross-examine witnesses against the child.

(E) Obtain witnesses or tangible evidence by compulsory
process.

(F) Introduce evidence on the child's own behalf.

(G) Refrain from testifying against himself or herself.

(H) Have the state prove beyond a reasonable doubt that the
child committed the **status offense or the delinquent act**
charged.

(3) The possibility of waiver to a court having criminal
jurisdiction.

(4) The dispositional alternatives available to the juvenile court
if the child is adjudicated a delinquent child.

SECTION 35. IC 31-37-14-1 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A finding by a
juvenile court that a child committed a **status offense or a delinquent**
act, or that an adult committed a crime, must be based upon proof
beyond a reasonable doubt.

SECTION 36. IC 31-37-19-4 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) This section

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applies if a child:

- (1) is a delinquent child under IC 31-37-2 due to the commission of a ~~delinquent act~~ **status offense** under IC 31-37-2-3 (or IC 31-6-4-1(a)(3) before its repeal); and
- (2) has been previously determined to be a delinquent child under IC 31-37-2 (or IC 31-6-4-1(b)(2) before its repeal) due to the commission of a ~~delinquent act~~ **status offense** under IC 31-37-2-3 (or IC 31-6-4-1(a)(3) before its repeal).

(b) The juvenile court shall, in addition to any other order or decree the juvenile court makes under this chapter, order the bureau of motor vehicles to invalidate the child's driver's license or permit for a period specified by the court that is not less than ninety (90) days but not more than one (1) year.

SECTION 37. IC 31-37-19-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) With respect to a wardship awarded under section 6(b)(2)(A) of this chapter, a child may not be awarded to the department of correction, if the child,

~~(1)~~ except as provided by subsection (b), is:

~~(A)~~ (1) less than twelve (12) years of age; or

~~(B)~~ (2) at least eighteen (18) years of age;

at the time of the dispositional decree. ~~or~~

~~(2) was determined to be a delinquent child because the child violated IC 7.1-5-7.~~

(b) A wardship may be awarded to the department of correction if the child:

(1) is ten (10) or eleven (11) years of age; and

(2) is found to have committed an act that would have been murder if committed by an adult.

(c) The department of correction may not confine a delinquent child, except as provided in IC 11-10-2-10, at:

(1) an adult correctional facility; or

(2) a shelter care facility;

that houses persons charged with, imprisoned for, or incarcerated for crimes unless the child is restricted to an area of the facility where the child may have not more than haphazard or incidental sight or sound contact with persons charged with, imprisoned for, or incarcerated for crimes.

SECTION 38. IC 31-37-19-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 23. A court may not place a child who is a delinquent child under IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal) in:

(1) a community based correctional facility for children;

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- 1 (2) a juvenile detention facility;
 2 ~~(3) a secure facility;~~
 3 ~~(4) (3) a secure private facility for children;~~ or
 4 ~~(5) (4) a shelter care facility;~~

5 that is located outside the child's county of residence unless placement
 6 of the child in a comparable facility with adequate services located in
 7 the child's county of residence is unavailable or the child's county of
 8 residence does not have an appropriate comparable facility with
 9 adequate services.

10 SECTION 39. IC 31-37-22-5 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. If:

12 (1) a child is placed in a shelter care facility or other place of
 13 residence on probation or is under the supervision of the
 14 juvenile court as part of a court order with respect to a delinquent
 15 act status offense under ~~IC 31-37-2-2~~; IC 31-37-2;

16 (2) the child received a written warning of the consequences of a
 17 violation of the placement committing a subsequent unrelated
 18 status offense during the period of probation or court
 19 supervision at the hearing during which the placement probation
 20 or court supervision was ordered;

21 (3) the issuance of the warning was reflected in the records of the
 22 hearing;

23 (4) the child is not held in a juvenile detention facility for more
 24 than twenty-four (24) hours, excluding Saturdays, Sundays, and
 25 legal holidays, before the hearing at which it is determined that
 26 the child violated that part of the order concerning the child's
 27 placement in a shelter care facility or other place of residence;
 28 and commits a subsequent unrelated status offense during the
 29 period of probation or court supervision; and

30 (5) the child's mental and physical condition may be endangered
 31 if the child is not placed in a secure facility for children;

32 the juvenile court may modify its disposition order with respect to the
 33 delinquent act status offense and place the child in a public or private
 34 secure facility for children.

35 SECTION 40. IC 31-37-22-5.5 IS ADDED TO THE INDIANA
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2004]: Sec. 5.5. (a) If a child described in
 38 section 5(4) of this chapter is placed in a secure facility for children
 39 during the pendency of a hearing to determine whether a violation
 40 of a term or condition of probation or court supervision has
 41 occurred, the juvenile court shall:

42 (1) order a guardian ad litem or other person approved by the

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1 court to:

2 (A) conduct an in-person interview with the child not later
3 than twenty-four (24) hours after the child is placed in the
4 secure facility for children, excluding Saturdays, Sundays,
5 and legal holidays; and

6 (B) submit a written assessment based upon the interview
7 under clause (A) that addresses the:

8 (i) underlying cause for the commission of the status
9 offenses; and

10 (ii) immediate needs of the child, if any;

11 to the juvenile court not later than forty-eight (48) hours
12 after the child is placed in the secure facility for children,
13 excluding Saturdays, Sundays, and legal holidays; and

14 (2) conduct a hearing to determine:

15 (A) if probable cause exists to believe the child violated a
16 term or condition of probation or court supervision; and

17 (B) the appropriate placement of the child, if probable
18 cause is found, during the pendency of a hearing under
19 subsection (b);

20 not later than forty-eight (48) hours after receipt of the
21 assessment under subdivision (1), excluding Saturdays,
22 Sundays, and legal holidays. The court must consider the
23 assessment submitted to the court in making a placement
24 determination under clause (B).

25 (b) If a juvenile court orders a child to be held in a secure
26 facility for children following a hearing under subsection (a)(2), the
27 juvenile court must:

28 (1) conduct a hearing to determine whether:

29 (A) a violation of a term or condition of probation or court
30 supervision has occurred; and

31 (B) the court will modify its original disposition order; or

32 (2) resolve the violation and modification by agreement of the
33 parties;

34 not later than seven (7) days after the hearing under subsection
35 (a)(2) is completed, excluding Saturdays, Sundays, and legal
36 holidays.

37 SECTION 41. IC 31-37-22-7 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) **Except as**
39 **provided in section 7.5 of this chapter**, if the juvenile court modifies
40 its disposition order under section 5 ~~or 6~~ of this chapter, the court may
41 order the child placed under one (1) of the following alternatives:

42 (1) In a nonlocal secure private facility **for children** licensed

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under the laws of any state. Placement under this alternative includes authorization to control and discipline the child.

(2) In a local secure private facility **for children** licensed under Indiana law. Placement under this alternative includes authorization to control and discipline the child.

~~(3) In a local secure public facility:~~

~~(4)~~ (3) In a local alternative facility approved by the juvenile court.

~~(5) As a ward of the department of correction for housing in any correctional facility for children. Wardship under this alternative does not include the right to consent to the child's adoption. However, without a determination of unavailable housing by the department of correction, a child found to be subject to section 5 or 6 of this chapter and placed in a secure facility of the department of correction may not be housed with any child found to be delinquent under any other provision of this article.~~

(b) If the juvenile court places a child under subsection (a)(3): ~~or (a)(4):~~

(1) the length of the placement may not exceed thirty (30) days; and

(2) the juvenile court shall order specific treatment of the child designated to eliminate the child's disobedience of the court's order. ~~of placement.~~

(c) The juvenile court shall retain jurisdiction over any placement under this section (or IC 31-6-7-16(d) before its repeal) and shall review each placement every three (3) months to determine whether placement in a secure facility **for children** remains appropriate.

SECTION 42. IC 31-37-22-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 7.5. (a) A juvenile court that modifies its disposition under section 5 of this chapter may, as an alternative to a placement under section 7 of this chapter:**

(1) place a child in a juvenile detention facility; or

(2) designate a child as a ward of the department of correction for housing in a correctional facility for children;

if the court makes the required findings under subsection (c). A child placed in a correctional facility for children under subdivision (2) may not be housed with a delinquent child (as described in IC 31-37-1-1) unless the department of correction determines that housing necessary to meet this requirement is unavailable.

(b) Wardship under subsection (a)(2) does not include the right

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1 to consent to a child's adoption.

2 (c) If a juvenile court determines that a child is a repeat
3 runaway or a repeat truant the court may order the child to be
4 placed in a facility described in subsection (a) only if the court
5 finds by a preponderance of the evidence that:

6 (1) the child has been placed in at least one (1) less restrictive
7 placement based upon a previous judgment under
8 IC 31-37-2-2 or IC 31-37-2-3; and

9 (2) placement in a facility described in subsection (a) is the
10 most appropriate placement for the child based on the needs
11 and best interests of the child.

12 SECTION 43. IC 31-38-2-9 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) A local
14 coordinating committee is not required to review the following
15 restrictive placements:

16 (1) Predispositional detention not to exceed sixty (60) days of a
17 child charged with a delinquent act as described in IC 31-37-1 or
18 a status offense as described in IC 31-37-2.

19 (2) Placement of a child in an inpatient psychiatric facility not to
20 exceed thirty (30) days.

21 (3) Emergency placement of a child in a shelter care facility not
22 to exceed sixty (60) days.

23 (4) Hospitalization of a child for purposes other than psychiatric
24 care.

25 (b) After the expiration of the time limit set forth in subsection
26 (a)(1), (a)(2), or (a)(3), a restrictive placement described in subsection
27 (a)(1), (a)(2), or (a)(3) is subject to the same requirements as any other
28 restrictive placement.

29 (c) If:

30 (1) the referring agency has made a reasonable attempt to obtain
31 a committee recommendation concerning the placement of a child
32 placed under subsection (a)(1) through (a)(3); and

33 (2) the recommendation has not been received by the referring
34 agency within ten (10) days of the expiration of the placement;

35 a court with juvenile court jurisdiction may, upon petition of the
36 referring agency, or sua sponte if the court is the referring agency,
37 order the members of the committee to make a recommendation.

38 SECTION 44. IC 31-39-5-4 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) Upon written
40 request of the child or the child's parent, guardian, or custodian, a law
41 enforcement agency shall destroy or deliver to the child any of the
42 child's fingerprints or photographs taken under section 1 of this chapter

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that are within that agency's possession if:

- (1) the child was taken into custody and no petition was filed against the child;
- (2) the petition was dismissed because of mistaken identity;
- (3) the petition was dismissed because no **status offense or** delinquent act was actually committed; or
- (4) the petition was dismissed for lack of probable cause.

(b) If the child has a record of prior arrests or if another charge is pending against the child, the law enforcement agency does not have to destroy the child's fingerprints or photographs.

SECTION 45. IC 31-40-1-1.7, AS ADDED BY P.L.277-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1.7. (a) A person may pay a monthly probation user's fee under ~~section 1 or 1.5 of this chapter~~ **IC 31-40-2-1 or IC 31-40-2-1.5** before the date the payment is required to be made without obtaining the prior approval of a court or a probation department. However, if a delinquent child is discharged from probation before the date the delinquent child was scheduled to be released from probation, any monthly probation user's fee paid in advance for the delinquent child may not be refunded.

(b) A probation department may petition a court to:

- (1) impose a probation user's fee on a person; or
- (2) increase a person's probation user's fee;

under ~~section 1 or 1.5 of this chapter~~ **IC 31-40-2-1 or IC 31-40-2-1.5** if the financial ability of the person to pay a probation user's fee changes while the person is on probation.

(c) An order to pay a probation user's fee under ~~section 1 or 1.5 of this chapter~~ **IC 31-40-2-1 or IC 31-40-2-1.5**:

(1) is a judgment lien that:

- (A) attaches to the property of the person subject to the order;
- (B) may be perfected;
- (C) may be enforced to satisfy any payment that is delinquent under ~~section 1 or 1.5 of this chapter~~ **IC 31-40-2-1 or IC 31-40-2-1.5**; and
- (D) expires;

in the same manner as a judgment lien created in a civil proceeding;

- (2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and
- (3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) A delinquent child placed on probation for more than one (1)

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status offense, more than one (1) delinquent act, or a combination of at least one (1) status offense and at least one (1) delinquent act:

(1) may be required to pay more than one (1) initial probation user's fee; and

(2) may not be required to pay more than one (1) monthly probation user's fee per month;

to either the probation department or the clerk of the court.

(e) If a court orders a person to pay a probation user's fee under ~~section 1 or 1.5 of this chapter~~, **IC 31-40-2-1 or IC 31-40-2-1.5**, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

(f) If:

(1) a person is delinquent in paying the person's probation user's fees required under ~~section 1 or 1.5 of this chapter~~, **IC 31-40-2-1 or IC 31-40-2-1.5**; and

(2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit;

the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees.

SECTION 46. IC 35-38-1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 22. A court that imposes a sentence for conviction ~~of a misdemeanor~~ upon a person who is less than eighteen (18) years of age may enter an order requiring that the convicted person serve the sentence in a juvenile detention facility established under IC 31-31-8 (or IC 31-6-9-5 before its repeal). However, before an order may be entered under this section, the court must secure the written approval of the judge of the juvenile court allowing the detention of the person in the juvenile detention facility.

SECTION 47. IC 35-46-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. A person eighteen (18) years of age or older who knowingly or intentionally encourages, aids, induces, or causes a person under eighteen (18) years of age to commit **a status offense (as defined in IC 31-9-2-121.5)** or an act of delinquency (as defined by IC 31-37-1) ~~or IC 31-37-2~~ commits contributing to delinquency, a Class A misdemeanor. However, the offense is a Class C felony if the person knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act that would be a felony if committed by an adult under:

(1) IC 35-48-4-1;

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1 (2) IC 35-48-4-2;
 2 (3) IC 35-48-4-3;
 3 (4) IC 35-48-4-4;
 4 (5) IC 35-48-4-4.5;
 5 (6) IC 35-48-4-4.6; or
 6 (7) IC 35-48-4-5.
 7 SECTION 48. IC 31-37-22-6 IS REPEALED [EFFECTIVE JULY
 8 1, 2004].

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